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**U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services**

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

FILE

Office: Madrid

Date:

JUL 02 2003

IN RE: Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under
Section 212(i) of the Immigration and Nationality Act, 8 U.S.C
§ 1182(i)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

JUL0203-05H2212

DISCUSSION: The waiver application was denied by the Officer in Charge, Madrid, Spain, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be dismissed, and the order dismissing the appeal will be affirmed.

The applicant is a native and citizen of Portugal who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation in 1990.

The applicant married a native of Portugal, in Portugal, in August 1979, and his wife became a lawful permanent resident in March 2001. The applicant is the derivative beneficiary of an approved Petition for Alien Relative filed by his wife's sibling. The applicant seeks a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. The AAO affirmed that decision on appeal.

On motion, counsel states that the application was incorrectly denied as a matter of law. Counsel further states that the applicant's daughter, [REDACTED] is 14 years of age and not 20 as the AAO incorrectly assumed. Counsel indicated that a brief would follow. No further information is contained in the record.

It is noted that in determining [REDACTED] age as stated in the previous decision, the AAO relied on counsel's statement in paragraph 2 of Point II that "the INS should find extreme hardship with LPR wife of 22 years and two (2) LPR children, born in 1980 and 1982." The AAO also relied on point 5 of the applicant's notarized statement in which he states, "My wife and I married 22 years ago, we have two children, [REDACTED] (sic), born on March 24, 1980 and [REDACTED] (sic) [REDACTED] born on February 22, 1982, both were born in Portugal."

Counsel provides a copy of [REDACTED] birth certificate that reflects she was born in 1988 and not in 1982 as previously indicated. Nevertheless, as noted in the previous decision, children are not qualifying relatives in section 212(i) proceedings no matter what age.

Pursuant to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence.

Pursuant to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration; and be supported by any pertinent precedent decisions.

Pursuant to 8 C.F.R. § 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

The issues in this matter were thoroughly discussed by the director and the AAO in their prior decisions. Since no new issues have been presented for consideration, the motion will be dismissed.

ORDER: The motion is dismissed. The order of October 1, 2002, dismissing the appeal is affirmed.